

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

DEPT. OF TRANSPORTATION
FOCKETS

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Joint Applications of

AMERICAN AIRLINES, INC. and
BRITISH AIRWAYS PLC

OST-2001-10387 *132*
OST-2001-10388 *-100*

under 49 USC 41308 and 41309 for
approval and antitrust immunity and
under 14 CFR Part 212 and 49 USC
40109 for blanket codesharing and
related exemption authority

Joint Applications of

UNITED AIR LINES, INC.
BRITISH MIDLAND AIRWAYS LIMITED,
AUSTRIAN AIRLINES AG
LAUDA AIR LUFTFAHRT AG
DEUTSCHE LUFTHANSA AG and
SCANDINAVIAN AIRLINES SYSTEM

OST-2001-10575 *13*
OST-2001-10576 *-6*

under 49 USC 41308 and 41309 for
approval and antitrust immunity and
(for United/British Midland) under 14
CFR Part 212 and 49 USC 40109 for
blanket codesharing and related
exemption authority

JOINT ANSWER OF AMERICAN AIRLINES, INC. AND
BRITISH AIRWAYS PLC IN OPPOSITION TO MOTION
OF NORTHWEST AIRLINES, INC. TO CONSOLIDATE

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November 9, 2001

BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D. C.

Joint Applications of :
: AMERICAN AIRLINES, INC. and : OST-2001-10387
: BRITISH AIRWAYS PLC : OST-2001-10388
: :
under 49 USC 41308 and 41309 for :
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Joint Applications of :
: UNITED AIR LINES, INC. : OST-2001-10575
: BRITISH MIDLAND AIRWAYS LIMITED, : OST-2001-10576
: AUSTRIAN AIRLINES AG :
: LAUDA AIR LUFTFAHRT AG :
: DEUTSCHE LUFTHANSA AG and :
: SCANDINAVIAN AIRLINES SYSTEM :
: :
under 49 USC 41308 and 41309 for :
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(for United/British Midland) under 14 :
CFR Part 212 and 49 USC 40109 for :
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exemption authority :

JOINT ANSWER OF AMERICAN AIRLINES, INC. AND
BRITISH AIRWAYS PLC IN OPPOSITION TO MOTION
OF NORTHWEST AIRLINES, INC. TO CONSOLIDATE

American Airlines, Inc. and British Airways Plc
hereby jointly answer in opposition to the motion submitted on
October 31, 2001 by Northwest Airlines, Inc. to consolidate the
captioned proceedings. Northwest's motion is clearly inter-
posed for delay, makes no compelling case that consolidation or
other relief is required, and should be denied.

The American/British Airways applications were filed three months ago, on August 10, 2001, and were deemed complete on August 27, 2001. Answers were submitted on November 2, 2001, and replies are due today, closing the record for the submission of pleadings.

By contrast, the applications by United and British Midland were submitted on September 5, 2001, and they did not even attempt to complete their submission until October 18, 2001. The Department has not yet deemed the United/British Midland applications complete, and no scheduling notice has been issued.¹

If the Department were to grant Northwest's motion, the American/British Airways proceeding, which is now ripe for a show-cause order, would be unduly delayed. That would place at grave risk the achievement of an open skies agreement between the U.S. and the U.K.

The Department has already rejected a series of other delaying tactics by Northwest and its ally Continental Airlines, Inc., and should recognize that Northwest's latest motion is simply more of the same. Indeed, by Order 2001-9-12,

¹On November 6, 2001, the Department issued a notice in the United/bmi dockets (OST-2001-10575 and 10576) granting access to confidential documents by affidavit holders, and stated that "[w]e will announce an appropriate procedural schedule for the processing of these cases at a later date" (p. 3).

September 17, 2001, the Department turned aside earlier arguments that the American/British Airways and United/British Midland applications be considered together:

"Continental and Northwest argue that we must consider the subject joint application [AA/BA] and the proposed alliance between United Air Lines and British Midland at the same time. However, at this point we have not established procedures and procedural dates for considering the UAL/bmi application because those applicants have not submitted all of the information needed to process their application" (p. 4).

In that same order, the Department denied Northwest's motion for a 120-day extension of the answer period, explaining that:

"Because of a pending challenge to the U.K.'s authority to sign a bilateral aviation services agreement with the United States, we must act promptly on the application filed here by American and British Airways. Currently, each member state of the European Union negotiates separately its bilateral aviation relations with the United States. The Commission of the European Union has asked the European Court of Justice to rule that the Commission -- and not individual member states -- is the appropriate party to negotiate aviation relations with the United States. The ECJ is expected to issue its ruling soon. A favorable ruling for the Commission could seriously inhibit our ability to reach an open skies agreement with the United Kingdom" (p. 4, emphasis added).

In Order 2001-9-15, September 24, 2001, the Department rejected yet another request that this proceeding be deferred for 120 days, finding that "we must move forward with

the public's business as required by the exigencies of this case" (p. 4). And in Order 2001-10-13, October 26, 2001, the Department again denied requests for delay, stating that "we are committed to carrying on the business of government, and this includes processing application for antitrust immunity" (p. 3).

Northwest has made no credible showing that the confidential submissions made by United/British Midland in their dockets are necessary to assess the merits of the American/British Airways applications. American and British Airways have submitted voluminous materials, including a number of items specifically requested by Northwest (see Order 2001-9-12). The AA/BA dockets include far more data and information than in any comparable proceeding. Northwest surely does not need to go on a fishing expedition into the United/British Midland dockets to present its case on American and British Airways, when Northwest barely made any use of the information available in the AA/BA record itself.²

²Indeed, in its answer to AA/BA on November 2, 2001, Northwest cited only two of the confidential documents submitted by American; made little use of the supplemental data Northwest requested in its motion of September 10, 2001 and that the Department required the applicants to submit by Order 2001-9-15; and made only scattered reference to confidential documents submitted by British Airways.

Moreover, if the Department were to accept Northwest's theory that "[t]he potential combined effects of the proposed alliances must be evaluated in their totality" (p. 4), then there would be no reason not to consolidate the pending Delta/Air France/Alitalia/Czech Airlines antitrust immunity proceeding (OST-2001-10429) as well. The decisional process would be unending, which is exactly the goal Northwest is pursuing.

Northwest's motion runs counter to applicable precedent in similar situations. In American/Canadian Airlines, Order 96-7-21, July 16, 1996, the Department denied various claims that "due process considerations require us to give simultaneous consideration to the American/CAI and United/Air Canada [antitrust immunity] applications," saying that "[w]e disagree" (p. 13):

"The Ashbacker requirement of contemporaneous consideration of mutually exclusive applications does not govern this proceeding.... Since we have no policy of limiting the number of immunized alliances, this proceeding is not analogous to the types of proceedings where courts required contemporaneous consideration of mutually-exclusive licenses....

"Furthermore, American and CAI filed their joint application on November 3, 1995. We issued our show-causae order on May 28, 1996, nearly seven months later. However, United and Air Canada only filed their application with their answer and comments to our show-cause order, when the American/CAI application was already ripe for decision and, indeed, had been tentatively decided. The

due process requirements of Ashbacher do not demand that we defer a final decision in this case, in order to consider an application that was filed much later.

"Finally, Doubleday merely requires us to give similar treatment to similarly situated applicants. We will consider the United/Air Canada application in due course, and will reach a decision based upon the particular facts in the record of that case and on other officially noticeable data, just as we have done here" (p.14).

It is also well-established that "the principle of administrative finality is...an element of the public interest, and that principle demands that the record in route cases be brought to a close as expeditiously as possible.... We are not prepared...to reopen the record simply because parties...desire an additional bite at the apple. To do so would be to invite interminable delay and to deprive the market of competitive services found to be required by the public interest." See Chicago-New Orleans Nonstop Route Proceeding, 73 CAB 543, 550 (1977). This principle of finality should equally be applied in antitrust immunity proceedings.

For the same reasons as stated above, we also oppose Northwest's "alternative" request that, if consolidation is not granted, then the Department should allow supplemental answers in the AA/BA dockets once the confidential submissions in the United/British Midland dockets have been made available to affidavit holders. This alternative is intended to have the

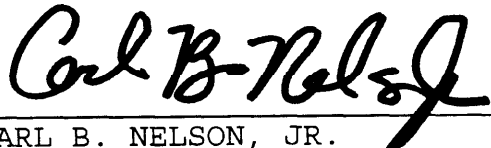
same result as outright consolidation, that is, to delay a decision on AA/BA. The Department should reject Northwest's alternative request as well.

In short, Northwest's latest motion is a transparent attempt to cause such a delay in the Department's decision on AA/BA that the U.K. will lose its ability to negotiate an open skies agreement with the U.S. The Department should rule, once again, that it will not put off its decision. Northwest's motion should be denied in its entirety.

Respectfully submitted,



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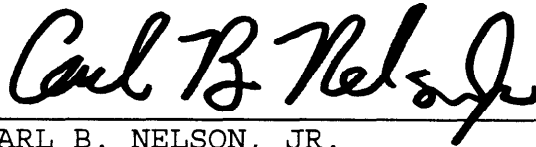


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November 9, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by hand delivery or first-class mail on all persons named on the attached service list.

A handwritten signature in black ink, reading "Carl B. Nelson, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

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